Agency:	**107** Health Care Authority
Decision Package Code/Title:	**PL-KC CMS "Lock-out" for CHIP**
Budget Period:	**2014 Supplemental Submittal**
Budget Level:	**PL –** Policy Level

Recommendation Summary Text PLACEHOLDER

The Health Care Authority (HCA) requests $1,928,000 ($674,000 GF-State) in the 2014 Supplemental to fund an anticipated increase in enrollment due to a new Centers for Medicare and Medicaid Services (CMS) Rule (see Addendum). Under this rule, the "lock out" period that a state may impose on Children's Health Insurance Program (CHIP) eligibility is limited to no more than 90 days. This limitation is anticipated to result in an increase in caseload. The requested funds are for this anticipated increased caseload.

This is a placeholder request and will be updated once HCA obtains more data on the current delinquent premium balance.

Package Description

42 CFR 457.570 limits the "lock out" period that a state may impose on CHIP eligibility to no more than 90 days. At the end of the "lock-out" a family may reapply for CHIP coverage regardless of whether they have paid their delinquent premium. In Washington we currently have a 3 month "grace period" for non-payment of premiums. After 3 months, the family is terminated from coverage if they do not pay their premium. Coverage may be restored at any time during the certification period if the family brings their premium balance to current. An example will illustrate the potential impact. This example will be addressed under the current process and then the future process.

> **Current process.** A family applies and is approved for CHIP coverage in August. The premium is $20/mo. Their first premium is not due until mid-September. The family doesn't pay the premium in September, or October, or November. Their coverage is terminated the end of November for non-payment. Their premium delinquency debt is $60. The family may pay the delinquent premium at any time between December and July and have their child's eligibility for CHIP reinstated back to the termination date. No new application is required. If the family does not pay, the debt is written off after 12 months (November – 12 months from month of termination). If the family reapplies while there is a delinquent debt their eligibility is pended for payment of the outstanding premium.
>
> **Future process.** Consider the same example as above, where the eligibility decision is closed in November. The state may only prevent re-enrollment in CHIP for non-payment of premiums for 90 days (December, January, February). In March the family could reapply and the child be found eligible regardless of the debt.

What is the fiscal impact of the new process? The change in rule undermines the premium collection process. Potentially, the family could obtain CHIP coverage for their child 6 months out of every 12 without paying a premium. To what degree we would have delinquent CHIP premiums is unclear. Currently 1 -2 % of the caseload terminates each month for non-payment of premiums. Many of these children come back on coverage, either because they establish eligibility for Medicaid (which is free) or because they pay the delinquent premium.

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Questions related to this decision package should be directed to Tom Aldrich at (360) 725-1363 or at Thomas.Aldrich@hca.wa.gov.

Fiscal Detail/Objects of Expenditure

	FY 2014	FY 2015	Total
1. Operating Expenditures:			
Fund 001-1 GF-State	$ 337,000	$ 337,000	$ 674,000
Fund 001-2 GF-Federal	$ 627,000	$ 627,000	$ 1,254,000
Total	**$ 964,000**	**$ 964,000**	**$ 1,928,000**

	FY 2014	FY 2015	Total
2. Staffing:			
Total FTEs	-	-	-

	FY 2014	FY 2015	Total
3. Objects of Expenditure:			
A - Salaries And Wages	$ -	$ -	$ -
B - Employee Benefits	$ -	$ -	$ -
C - Personal Service Contracts	$ -	$ -	$ -
E - Goods And Services	$ -	$ -	$ -
G - Travel	$ -	$ -	$ -
J - Capital Outlays	$ -	$ -	$ -
N - Grants, Benefits & Client Services	$ 964,000	$ 964,000	$ 1,928,000
Other (specify) -	$ -	$ -	$ -
Total	**$ 964,000**	**$ 964,000**	**$ 1,928,000**

	FY 2014	FY 2015	Total
4. Revenue:			
Fund 001-2 GF-Federal	$ 627,000	$ 627,000	$ 1,254,000
Total	**$ -**	**$ -**	**$ -**

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Narrative Justification and Impact Statement

What specific performance outcomes does the agency expect?

HCA expects to continue to provide access to quality health care to low-income individuals in the State of Washington.

Performance Measure Detail

Activity Inventory
H010 HCA Healthy Options
H011 HCA All Other Clients - Fee for Service - Mandatory Services
H012 HCA All Other Clients - Fee for Service - Optional Services

Is this decision package essential to implement a strategy identified in the agency's strategic plan?

This step contributes to the agency's strategic plan by ensuring that the Children's Health Insurance Program (CHIP) program is adequately funded so that our clients continue to have access to quality health care.

Does this decision package provide essential support to one of the Governor's priorities?

Yes. This package supports the Governor Inslee's Results Washington Goal 4: Healthy and Safe Communities - "Provide access to good medical care to improve people's lives".

Does this decision package make key contributions to statewide results? Would it rate as a high priority in the Priorities of Government (POG) process?

Yes. This package supports the Governor Inslee's Results Washington Goal 4: Healthy and Safe Communities - "Provide access to good medical care to improve people's lives".

What are the other important connections or impacts related to this proposal?

Not applicable.

What alternatives were explored by the agency, and why was this alternative chosen?

None.

What are the consequences of not funding this package?

Not funding this package exposes HCA to the financial risk associated with unanticipated growth in eligible caseload which would force HCA to propose elimination of services and/or populations from medical coverage.

What changes would be required to existing statutes, rules, or contracts, in order to implement the change?

None.

Expenditure and Revenue Calculations and Assumptions

Revenue Calculations and Assumptions:

HCA assumes that the CHIP services funded by this decision package will be eligible for federal matching funds.

Expenditure Calculations and Assumptions:

This placeholder request will be updated once HCA obtains more data on the current delinquent premium balance. See the attached Addendum for additional information.

Which costs and functions are one-time? Which are ongoing? What are the budget impacts in future biennia?

Distinction between one-time and ongoing costs:

All costs are ongoing and will impact future biennia.

Budget impacts in future biennia:

All costs are ongoing and will impact future biennia.

Addendum

b. Limiting CHIP Premium Lock-Out Periods (§ 457.570)

We proposed to define a CHIP premium lock-out as a period not exceeding 90 days when, at state option, a CHIP eligible child may not be permitted to reenroll in coverage if they have unpaid premiums or enrollment fees. Following a premium lock-out period, we proposed that the child must be permitted to enroll without regard to past due premiums. We proposed at § 457.570 to permit states to impose premium lock-out periods only for families that have not paid outstanding premiums or enrollment fees, and only up to a 90-day period. We also specified that a premium lock-out period must end once a family has paid the premium or enrollment fee. We also invited comments on any alternative late payment policies to encourage families to make their CHIP premium payments in a timely manner to avoid gaps in coverage. We received the following comments concerning the proposed lock-out period provision.

Comment: The majority of commenters supported the proposed rule requiring reasonable notice of non-payment, limiting the use of lock-outs only for non-payment of premiums (and only as long as the non-payment continues, and subject to a 90-day maximum), and disallowing states from requiring payment of outstanding premiums at the end of the lock-out period before re-enrollment. In particular, commenters strongly supported that the CHIP agency must review the family's circumstances (§ 435.570(b)) to determine if their income has declined, making the child eligible for Medicaid or a lower cost-sharing category. Some commenters also strongly opposed the imposition of lock-out periods for any length of time for a CHIP child, and urged CMS to modify § 457.570 to ban lock-out periods. These commenters indicated that lock-outs are contrary to the goals of a reformed health system, as well as the health of children. Some commenters stressed that a quarter of a year without health insurance can have a significant impact on a child's healthy development, a child should not be subject to penalties for a failure to pay by another family member, and the Affordable Care Act recognizes that children should connect with their medical home eight times in the first year of life alone. One commenter also stated that lock-out periods in CHIP create disruptions in care, burdens on families, unnecessarily increase administrative costs, and that the elimination of lock-out periods is an important consumer protection.

A few commenters asked whether the process of premium collection and debt forgiveness will be aligned with the premium collection regulations for the Exchange.

Response: In response to the support of our proposed rule by the majority of commenters, and comments received by states related to the need to continue to have non-payment of premium policies in place to manage program costs (as described below), we are adopting in our final rule the proposed provisions that authorized states to institute a maximum 90-day lock-out period for non-payment of premiums. Lock-outs are permitted for non-payment of premiums, but only as long as the non-payment continues and subject to a 90-day maximum. We also want to clarify that requirements related to reasonable notice of nonpayment, and review of the family's circumstances to determine if their income has declined (for example, making the child eligible for Medicaid or a

lower cost-sharing category), are existing regulatory provisions that we have not modified by this rulemaking.

We appreciate the concerns expressed by some commenters with regard to the potential impact of any lock-out period on children, and for these reasons, we also adopted in the final rule the proposed restriction that lock-out periods may only apply to families who have not paid their premiums, and must end if a family pays its past due premium. We have also maintained the requirement that children must be permitted to enroll in CHIP subsequent to a 90-day lock-out period regardless of whether the family continues to owe past due premiums. In addition, we are also including requirements for non-payment of premium that are intended to align CHIP policies with policies applicable in the Exchange, to the extent possible. In CHIP and for those individuals with APTC in the Exchange, individuals are provided with a premium payment grace period, may be disenrolled for non-payment of premiums, and will not be required to pay past due premiums to reenroll in coverage. Exchange eligible individuals will have a longer grace period (90 days as opposed to 30 days) than CHIP, but will not be permitted to enroll in coverage until the next open enrollment period. Therefore, the amount of time an individual may have to wait before reenrollment in a Qualified Health Plan will vary, depending on when the premiums are missed in relation to the next scheduled open enrollment period, but will be no longer than 90 days for a child in CHIP.

We note that neither CHIP nor the Exchange have explicit rules governing debt forgiveness policies. More information on the Exchange rules related to non-payment of premiums is available at *http://www.gpo.gov/fdsys/pkg/FR-2012-03-27/pdf/2012-6125.pdf*.

Comment: A few commenters requested clarification on policies governing non-payment of premiums. They requested clarification on policies related to "forgiving" past due premiums and enrollment fees, as well as whether a state can continue to try to obtain the outstanding premium amount without affecting eligibility. One commenter indicated that funds should be recoverable using a debt collection process. The same commenter also asked how many cycles of premium forgiveness would be allowed for an individual. Another commenter asked CMS to generally clarify what steps states and health plans would be permitted to take in situations in which a CHIP enrollee re-enrolls after a lock-out period and again does not pay premiums.

Response: We believe that disenrolling a child from coverage and potentially requiring a child to go without coverage up to 90 days (assuming the family has not paid the premium or enrollment fee), is a significant deterrence to prevent a family from establishing a pattern of non-payment of premiums and re-enrollment. Therefore, this rule does not place a limit/cap on the number of times an individual may be re-enrolled after non-payment of their premiums. Nothing in this rule precludes a state from electing to establish policies for collecting debt from families that have not made their premium payments. Nor does this rule preclude states and health plans from offering incentives to encourage timely payment of premiums.

Comment: Some commenters recommended that states only be permitted to terminate coverage during a continuous eligibility period for failure to pay premiums as proposed at § 457.342(b) after complying with the disenrollment protections at § 457.570. Several commenters stressed that the

proposed rule should be strengthened to capture the intent noted in the preamble that "prohibiting a child from enrollment after the family pays the unpaid premium or enrollment fee is counter to promoting enrollment in and continual coverage." Some commenters also recommended that the final rule specify that if a family pays its outstanding premium between the end of their payment grace period and before the end of the lock-out period, the child be reinstated back to the effective end date with no gap in coverage and no loss of 12-month continuous eligibility (if applicable).

Response: We agree that coverage terminations occurring during a continuous eligibility period for failure to pay premiums can be implemented only after complying with the disenrollment protections at § 457.570, and we have modified § 457.342(b) to clarify this requirement. In addition to the preamble language describing that families that pay their premiums or enrollment fees prior to the end of a lock-out period must be re-enrolled in CHIP, we have also specified this requirement at § 457.570(c)(2) under this final rule. Section 2103(e)(3) of the Act describes a statutory premium grace period during which CHIP enrollees may pay their monthly premiums before being disenrolled. This provision requires States to grant individuals enrolled in separate child health programs a 30-day grace period, from the beginning of a new coverage period, to pay any required premium before enrollment may be terminated. The new coverage period begins the month following the last period for which a premium was paid. Aside from these requirements, states have, and will continue to have, flexibility to determine when coverage can be reinstated. As specified in our proposed rule at § 457.342(b), continuous eligibility may be terminated for failure to pay required premiums or enrollment fees.

Comment: Some commenters expressed concerns for potential unintended consequences of the proposed policies. One commenter stated that the proposed rule creates an incentive for individuals who are otherwise able to pay their premium to cycle through CHIP eligibility every other three month period and encourages gaps in access to medical services for children, who may subsequently present to the CHIP with higher acuity levels and higher cost needs. The commenter also stated that the proposed rule increases costs for states and the federal government, and diminishes health outcomes for children. The commenter encouraged CMS to continue to require member accountability in the CHIP program by allowing the collection of outstanding premiums in the presence of a 90-day grace period. Another commenter objected to the proposed rule to limit lock-out periods to 90 days and allow an individual to re-enroll upon payment of past due premiums, regardless of whether the lock-out period has expired. The commenter stated that this approach creates adverse selection, in that families may stop paying their premium when they may not have immediate health care needs, and then again pay their premiums only when they are in need of health care. Additionally, this commenter stated individuals should be required to pay any past due premiums as a condition of retaining eligibility for CHIP, even after a lock-out period has been satisfied. This commenter also stated that the proposed rule discards the plain statutory authority of title XXI that delegates this policy to states. Another commenter noted that CHIP is a "stepping stone" between Medicaid and employer-sponsored insurance or Exchange coverage, and that premiums in its current CHIP are minimal in comparison to employer-based coverage and private coverage. The commenter requested that premiums not be waived in states with requirement to repay outstanding premiums and no lock-out period. The commenter stated that waiving premiums does not promote responsibility, intrinsic value, or the effective management of program costs for states.

Response: The goal of allowing coverage for families that make current payments must be balanced with the concern that families will game the system to try to obtain coverage without paying premiums. We agree that there may be situations where families either elect, or are unable to pay their premiums multiple times during a given year. However, we are not aware of any evidence that these situations represent a significant number of cases. And, as stated in our response to the comment above, as long as states adhere to regulations at § 457.570, nothing in this rule precludes a state from continuing to establish policies for collecting debt from families that have not made their premium payments. We also encourage states to continue implementing approaches for simplifying premium payment arrangements and coping with administrative concerns families may have, and we continue to encourage states in this area to minimize the number of families that are disenrolled for non-payment of premiums.

Comment: One commenter stated that if CHIP lock-out periods are allowed in 2014, CMS should prohibit states that use this option from requiring children subject to a lock-out period to reapply for coverage and that a child returning to coverage following a lock-out period should be handled in the same manner as a renewal. The commenter believes that because such children were eligible for CHIP apart from non-payment of premiums or enrollment fees, the state agency should be able to reassess eligibility based on available electronic data sources and families should only be asked for additional information if what has already been provided and currently available electronic data are not sufficient to establish eligibility.

Response: While we encourage states to consider the potential administrative cost savings and reduced burden on families that could result from assigning a pending eligibility status to a child for non-payment of premiums rather than requiring a new application, we will continue to permit states to have the flexibility to make this decision.

Comment: One commenter requested clarification on whether a child can receive APTC or CSR during a premium lock-out period.

Response: We anticipate that this issue will be addressed in further guidance from the Department of Treasury.

Comment: The preamble to our proposed rule specified that a state may not require the collection of past due premiums or enrollment fees as a condition of eligibility for reenrollment once the lock-out period has expired, regardless of the length of the lock-out period. One commenter recommended that this policy also be specified in § 457.570(c)(2).

Response: Section 457.570(c)(2) clearly specifies that "a state may not require the collection of past due premiums or enrollment fees as a condition of eligibility for reenrollment once the State-defined lock out period has expired, regardless of the length of the lock-out period." We have not made any modifications to this section.

Comment: Some commenters indicated that providing multiple ways to pay premiums and sending multiple, non-threatening payment due reminders are helpful in encouraging payment. These commenters suggested that CMS consider future sub-regulatory guidance to states to promote best

practices in premium payments.

Response: Most CHIPs report efforts to facilitate payment of premiums and enrollment fees, easing the process for families, and the majority of states also send multiple payment due reminders and allow a variety of payment methods (such as allowing families to make payments at multiple locations). We will consider issuing further sub-regulatory guidance in this area.

§ 457.570 Disenrollment protections.

* * * * *

(c) The State must ensure that disenrollment policies, such as policies related to non-payment of premiums, do not present barriers to the timely determination of eligibility and enrollment in coverage of an eligible child in the appropriate insurance affordability program. A State may not—
(1) Establish a premium lock-out period that exceeds 90-days in accordance with § 457.10 of this part.
(2) Continue to impose a premium lock-out period after a child's past due premiums have been paid.
(3) Require the collection of past due premiums or enrollment fees as a condition of eligibility for reenrollment once the State-defined lock out period has expired, regardless of the length of thelock-out period.
(d) The State must provide the enrollee with an opportunity for an impartial review to address disenrollment from the program in accordance with § 457.1130(a)(3).

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